


# SAMPLE

<b>SUBCONTRACT</b>  <b>NO. B525176</b>	 University of California Lawrence Livermore National Laboratory Procurement & Materiel P. O. Box 5012 Livermore, CA 94551
<b>Subcontractor:</b>  [Subcontractor's Name] Attention: [Attention] [Address] [City, State, Zip]	<b>University Procurement Representative:</b>  Brandt Esser, Sr. Contract Administrator  <b>Phone #:</b> (925) 423-1518 <b>Fax #:</b> (925) 423-8019 <b>E-Mail:</b> esser3@llnl.gov

## Introduction

This is a Fixed Price Subcontract for a Multiprogrammatic and Institutional Computing Capacity Resource (MCR), as further described herein.

The parties to this Subcontract are The Regents of the University of California (hereinafter called "University") and the party identified above as the "Subcontractor."

This is a subcontract under Prime Contract No. W-7405-ENG-48 between the University and the United States Government (hereinafter called "Government"), represented by the Department of Energy (hereinafter called "DOE"), for the management and operation of the Lawrence Livermore National Laboratory (hereinafter called "LLNL") and the performance of certain research and development work.

## Agreement

The parties agree to perform their respective obligations in accordance with the terms, conditions, and provisions of the attached SCHEDULE OF ARTICLES and any documents referenced or incorporated therein, which together with this Subcontract Signature Page shall collectively constitute the entire Subcontract and shall supersede all prior negotiations, representations, or agreements, whether verbal or written.

**SUBCONTRACTOR NAME**

**THE REGENTS OF  
THE UNIVERSITY OF CALIFORNIA**

BY: \_\_\_\_\_

BY: \_\_\_\_\_  
Signer's Name

TITLE: \_\_\_\_\_

TITLE: Signer's Title  
LLNL Procurement & Materiel

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

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## **SCHEDULE OF ARTICLES FOR SUBCONTRACT NO. B525176**

### **ARTICLE 1 – INCORPORATED DOCUMENTS**

The following documents and forms are hereby incorporated as a part of this Schedule of Articles of the Subcontract and are attached hereto:

#### **Documents**

GENERAL PROVISIONS FOR COMMERCIAL SUPPLIES AND SERVICES (GPs # 600 B; 05/23/01)  
STATEMENT OF WORK, MULTI-PROGRAMMATIC AND INSTITUTIONAL COMPUTING CAPACITY  
RESOURCE, VERSION 6, Dated 4-19-02  
SMALL BUSINESS SUBCONTRACTING PLAN, Dated \_\_\_\_\_  
WORK ON UNIVERSITY OR GOVERNMENT PREMISES (WUGP WAL 2 No Cert; 06/01/01)  
SECURITY AND SITE ACCESS PROVISIONS (08/01/00)  
SUBCONTRACT HAZARDS LIST, Dated 4/15/02  
PROPER USE OF LLNL COMPUTERS & NETWORKS (CSP POLICY 2329, V.3)  
MCR SAFETY PLAN, Dated \_\_\_\_\_

### **ARTICLE 2 – SCOPE OF WORK**

- A. The Subcontractor shall supply a Multiprogrammatic and Institutional Computing Capacity Resource. The work is more specifically described in the Statement of Work.
- B. The Subcontractor shall furnish all personnel, supervision, materials, supplies, equipment, tools, facilities, transportation, testing, and other incidental items and services necessary for performance of the work, except for Government Property specified herein to be furnished by the University. The Subcontractor shall deliver the materials, products, supplies, reports and residuals, as specified.
- C. The work shall be performed by the Subcontractor at the Subcontractor's facility located at TBD, at the LLNL, and at other locations approved by the University.
- D. The Subcontractor shall comply with all ES&H requirements, training, and associated safety documents referenced, attached, or incorporated to this subcontract, including any incorporated safety related documents submitted by the subcontractor and reviewed and accepted by the University.
- E. Safety Standards and Testing. The materials and supplies furnished or used by the Subcontractor shall meet nationally recognized safety standards or have been tested and found safe for use by the University in a manner specified by the Subcontractor. All electrical equipment, components and conductors and other items of the type requiring testing by a Nationally Recognized Testing Laboratory (NRTL) recognized by the Occupational Safety and Health Administration (OSHA), shall be NRTL listed, labeled, or tested, in accordance with Title 29, Part 1910, *General Industry Standards*, of the Code of Federal Regulations (29 CFR 1910). The Subcontractor shall notify the University

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Procurement Representative and the University Technical Representative, in writing, of any materials or supplies to be furnished or used that do not meet these requirements.

## **ARTICLE 3 – PERIOD OF PERFORMANCE**

The work described in ARTICLE 2 - SCOPE OF WORK shall be completed on or before TBD.

(Delivery – TBD pending receipt of proposals and completion of negotiations.)

## **ARTICLE 4 – PRICE AND PAYMENT**

### **A. Fixed Price**

The Subcontractor shall perform this Subcontract for the total fixed price of \$\_\_\_\_\_.

The fixed price stated above does not include, and the University shall not be charged for, any State Sales & Use Tax. The University holds California State Resale Permit No. SR-CHA 21-135323.

### **B. Invoices**

The Subcontractor shall submit its invoices to the following address:

University of California  
Lawrence Livermore National Laboratory  
Attention: Brandt Esser, L-550  
P.O. Box 808  
Livermore, CA 94551

### **C. Payment Terms**

Payment shall be made within \_\_\_\_\_ days after receipt of the Subcontractor's invoice, upon the University's acceptance of any portion of the work delivered or rendered for which a price is separately stated or an invoice is allowed.

## **ARTICLE 5 – COORDINATION AND ADMINISTRATION**

A. The University Procurement Representative for this Subcontract is Brandt Esser. All matters relating to the administration, performance and non-technical interpretation of this Subcontract shall be referred to the University Procurement Representative. The Subcontractor shall direct all notices and requests for approval to the University Procurement Representative. The University Procurement Representative will issue any notices or non-technical approvals to the Subcontractor.

B. The University Technical Representative for this Subcontract is Mark Seager. The University Technical Representative will provide technical direction in connection with the

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work to be performed under this Subcontract. The term “technical direction” is defined to include (1) direction to the Subcontractor which assist in the interpretation of drawings, specifications, or technical portions of the work description; and (2) the review and approval of technical reports, drawings, specifications, and information to be delivered by the Subcontractor under the Subcontract, where required. The University Technical Representative will issue all technical direction in writing.

- C. The University Technical Representative is not authorized to issue any technical direction which would (1) constitute an assignment of work outside the general scope of the work covered by this Subcontract; (2) change the description of the work to be performed or any applicable drawings, designs, and specifications; (3) change the time or place of performance; the method of shipment or packaging, or the place of inspection, delivery or acceptance; (4) increase the estimated cost for performance of the work or the time required for performance of the work; (5) change any expressed term or condition of the Subcontract; or (6) unreasonably interfere with the Subcontractor’s ability to perform and complete the work. Any such change must first be authorized by a written modification to this Subcontract issued by the University Procurement Representative.

## **ARTICLE 6 – PROPERTY**

- A. The Subcontractor shall acquire, and/or the University will furnish to the Subcontractor, the materials, equipment, supplies, and/or tangible personal property items identified below, for use under this Subcontract:

### Subcontractor Acquired Property

None

### University Furnished Government Property

64 BlueArc Si7500 Silicon Servers and software (16 to be sent to the subcontractor, 48 to be delivered to LLNL in August for integration)  
64 Net Gear GA 621 PCI64/66 gigabit ethernet HBAs and associated cabling (32 to be sent to the subcontractor; 32 to be delivered to LLNL in August for integration)  
1 Federated Quadrics switch  
960 Quadrics Elan 3 PCI6466 HBAs and associated cabling

- B. All property acquired by the Subcontractor and/or furnished by the University shall be identified, utilized, accounted for, and dispositioned in accordance with the clause of the GENERAL PROVISIONS entitled *GOVERNMENT PROPERTY (FIXED-PRICE CONTRACTS)*. Disposition directions and authorization will be provided by the University's Property Management Department.

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## **ARTICLE 7 – APPROVAL OF TECHNICAL DATA**

If this Subcontract requires the Subcontractor to furnish any drawings, specifications, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance or test data, or other technical data for approval by the University prior to Subcontractor performance, the approval of the data by the University shall not relieve the Subcontractor from responsibility for any errors or omissions in such data or from responsibility for complying with the requirements of this Subcontract, except as specified below. Any work done prior to such approval shall be at the Subcontractor's risk.

If the data includes any variations from the Subcontract requirements, the Subcontractor shall describe such variations in writing at the time of submission of the data. If the University approves any such variation(s), a change order to the Subcontract shall be issued by the University and, if appropriate, a bilateral modification to the Subcontract shall be negotiated.

## **ARTICLE 8 – ACCESS TO LLNL COMPUTER RESOURCES**

- A. Access to LLNL computer resources (e.g., computers and networks) by Subcontractor personnel shall be in accordance with, and is subject to, the requirements of the LLNL Computer Security Program, including, but not limited, to the requirements of the attachment entitled PROPER USE OF LLNL COMPUTERS AND NETWORKS, and its referenced documents, which will be made available to the Subcontractor. These requirements are applicable whether such access is at the LLNL, at the Subcontractor's facility, or elsewhere. If the Subcontractor does not comply with the provisions of this article, the University may withdraw Subcontractor's access to LLNL computer resources. Misuse of LLNL computer resources may be a violation of law and could result in appropriate action, including termination for default and/or criminal prosecution.
- B. Access to LLNL computing resources by Subcontractor personnel is only permitted as required to perform the work authorized under this Subcontract. Classified computer resources or information shall only be accessed as authorized, and shall be protected in accordance with the security provisions of this Subcontract. All other information or data furnished by the University, obtained from a LLNL computer, or developed on a LLNL computer resource by Subcontractor personnel must be protected by the Subcontractor to prevent disclosure to any person other than those authorized by the University. Files which are not assigned to Subcontractor personnel may not be accessed without specific permission from the University. The University reserves the right to monitor the use of LLNL computer resources through network operating software, by reviewing the contents of all LLNL computer resources and non-LLNL computers used to access LLNL computer resources, and other appropriate means.
- C. Computer passwords issued to Subcontractor personnel for access to the LLNL computer resources must not be shared and must be protected by Subcontractor personnel to prevent disclosure to any other persons. If a computer password is disclosed, or disclosure is suspected, the Subcontractor must immediately notify the University Technical Representative and arrange for replacement of the password.

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- D. The use at the LLNL of any computing or video conferencing capability utilizing non-LLNL equipment with electronic data transfer capabilities (e.g., personal computers including portables, laptops, notebooks, personal digital assistants, and handhelds) must be coordinated with the appropriate Information Systems Security Officer (ISSO), through the University Technical Representative, and may not be connected to or used to communicate with any LLNL equipment without the written approval of the University Technical Representative and the LLNL Computer Security Operations (CSO) organization.

## **ARTICLE 9 – GENERAL PROVISIONS**

- A. The clauses incorporated by reference in the attached GENERAL PROVISIONS shall be applicable to this Subcontract based on the value of the Subcontract, the status of the Subcontractor, and the nature and location of the work as indicated in the GENERAL PROVISIONS. As used therein, the term “Seller” shall mean “Subcontractor,” and the terms “Purchase Order” and “PO” shall mean “Subcontract.”
- B. This Subcontract shall not involve access to or the generation of classified information or access to “limited” or “exclusion” security areas. Accordingly, the clauses listed in the GENERAL PROVISIONS related to such work shall not apply.
- C. This Subcontract is not for the conduct of research, development, or demonstration (RD&D) work, or design work involving non-standard types of construction. Accordingly, the clauses listed in the GENERAL PROVISIONS related to such work shall not apply.
- D. The following change applies only to open source software delivered under this Subcontract.

FAR 52.227-14, paragraph (c)(1) is hereby replaced with the following.

(c)(1) Data first produced in the performance of this contract.

- (A) Unless provided otherwise in paragraph (d) of this clause, the Contractor may establish, without prior approval of the Contracting Officer –
- (i) claim to copyright subsisting in scientific and technical articles based on or containing data (published data) first produced in the performance of this contract and published in academic, technical or professional journals, symposia, proceedings or similar works; and
  - (ii) claim to copyright subsisting in computer software first produced in the performance of this contract.
- (B) The prior, express written permission of the Contracting Officer is required to establish claim to copyright subsisting in all other data first produced in the performance of this contract.

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- (C) When claim to copyright is made, the Contractor shall affix the applicable copyright notices of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including contract number) to the data when such data are delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office.
  - (D) For computer software, the Contractor will provide the source code, an expanded abstract, the executable object code and the minimum support documentation needed by a competent user to understand and use the software to DOE's Energy Science and Technology Software Center, P.O. Box 1020, Oak Ridge, TN 37831.
  - (E) For published data and computer software as defined in (A) above for which the Contractor has established a claim to copyright, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly by or on behalf of the Government.
- E. The following change applies only to open source software delivered under this Subcontract. DEAR 927.409 (d)(3) is hereby replaced with the following.
- (d)(3) The Contractor shall promptly deliver to the Contracting Officer, or to the Patent Counsel designated by the Contracting Officer, a duly executed and approved instrument fully confirmatory of all rights to which the Government is entitled and other terms pertaining to the computer software to which claim to copyright is made.

### **ARTICLE 10 – OPEN-SOURCE SOFTWARE**

- A. All computer software first produced in the performance of this Subcontract shall be open-source software and shall be subject to the terms and conditions of an open-source license. The University and the Subcontractor agree to use the following Berkeley Software Development open-source license template to license said software. (The terms YEAR and OWNER will be replaced in an actual license with the year of copyright and the name of the copyright holder, respectively.)

Copyright © <YEAR>, <OWNER>  
All rights reserved.

Redistribution and use in source and binary forms, with or without modification, are permitted provided that the following conditions are met.

Redistribution of source code must retain the above copyright notice, this list of conditions and the following disclaimer.

Redistribution in binary form must reproduce the above copyright notice, this list of conditions and the following disclaimer in the documentation and/or other materials provided with the distribution.

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B. Open-source software and its license are generally defined as follows for purposes of software delivered under this Subcontract.

1. Free Redistribution

Open-source software is governed by a license that does not restrict any party from selling or giving away the software as a component of an aggregate software distribution containing programs from different sources. The open-source license shall not require a royalty or other fee for such sale.

2. Source Code

Any program shall include source code and must allow distribution in source code or compiled forms. If an actual product is not distributed with source code, there shall be a well-publicized means of obtaining the source code for no more than a reasonable, nominal reproduction cost – preferably by downloading the source code via the Internet. Deliberately obfuscated source code is not allowed. Intermediate forms, such as the output of a preprocessor or translator, are not allowed.

3. Modifications and Derived Works

Open-source software may be modified or changed into a derived work, both of which shall be distributed under the same terms as the license of the original software or base source code.



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## **4. Distribution of the License**

The rights attached to the program, including base open-source software, modified open-source software or derived works, shall apply to all to whom the program is redistributed without the need for execution of an additional license by a recipient.

## **5. Non-Product Specific**

Open-source software shall be distributed with rights that do not depend upon being part of a particular program. All parties receiving open-source software, modified open-source software or derived works shall have the same rights as those granted in conjunction with the original software distribution.

## **6. Non-Contamination of Co-Distributed Software**

When open-source software is be distributed with other software that is not open-source software, the open-source software license shall not place restrictions on the latter.

(END OF SCHEDULE OF ARTICLES)